

REMARKS

Applicants are amending claims 36-39 to correct a typographical error. Applicants also are amending claims 1, 3-6, 8-11, 14, and 32-34 to clarify that various steps of the claimed method are performed by a computer processor. Therefore, claims 1-39 currently are pending and are subject to examination in the above-captioned patent application. Applicants respectfully request that the Examiner reconsider the above-captioned patent application in view of the foregoing amendments and the following remarks.

In the Office Action mailed April 21, 2005, the Examiner objected to claims 36-39 as allegedly including informalities. Applicants have amended claims 36-39 to correct a typographical error. Specifically, Applicants have amended claims 36-39 to replace the word: "method" with the word: "system." Therefore, Applicants respectfully request that the Examiner withdraw the objection to claims 36-39.

The Examiner rejected claims 1-18 and 32-35 under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. The Examiner also rejected claims 1-18 and 32-37 under 35 U.S.C. § 112, ¶1, as allegedly containing subject matter that was not described in the specification in such a way as to enable those of ordinary skill in the art at the time of the invention to make and use the claimed invention. Moreover, the Examiner rejected claims 1-39 under 35 U.S.C. § 103(a), as allegedly being rendered obvious by www.4n1software.com, dated March 3, 2001 (hereinafter referred to as "4GL") in view of U.S. Patent No. 6,270,351 to Roper. To the extent that these rejections

remain applicable in view of the foregoing amendments, Applicants respectfully traverse these rejections, as follows.

1. 35 U.S.C. § 101 Rejections

The Examiner rejected claims 1-18 and 32-35 under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. Specifically, the Examiner asserts that Applicants' previous amendments to the claims "are not enough to distinguish that the steps are being performed by a computer processor." Applicants have amended claims 1, 3-6, 8-11, 14, and 32-34 to clarify that various steps of the claimed method are performed by a computer processor. Applicants respectfully submit that claims 1-18 and 32-35, at least as amended, are directed towards statutory subject matter. Therefore, Applicants respectfully request that the Examiner withdraw the non-statutory subject matter rejection of claims 1-18 and 32-35.

2. 35 U.S.C. § 112, ¶1 Rejections

The Examiner rejected claims 1-18 and 32-37 under 35 U.S.C. § 112, ¶1, as allegedly containing subject matter that was not described in the specification in such a way as to enable those of ordinary skill in the art at the time of the invention to make and use the claimed invention. Specifically, the Examiner asserts that "the Applicants claim several mathematical processes such as calculations, factoring, and variances that are not disclosed in the specification

so as one skilled in the art would be able to make and/or use the system.” Applicants respectfully disagree.

In general, the “calculations” described in Applicants’ claims are associated with (1) determining the expected number of services within the date range by performing a calculation based on information included in the at least one service plan; (2) comparing the expected number of services with the number of identified encounters for the service plan; and (3) producing a result including a number indicating the shortfall or surplus of encounters for the service plan. Applicants respectfully submit that these “calculations” adequately are described in Applicants’ specification.

For example, Applicants’ specification states, in part:

Yet another unique feature of the SETS system that is of importance to the present invention is customizable scheduling, which allows the calendar to vary, for example, by building or other location. A critical component of many school districts or other entities is variation in schedule by building (e.g., school year versus calendar year, depending on building). Because of this feature of the SETS system, a theoretical calculation can be made of the level of services that should be provided to each child by each provider, based, for example, on the amount of time that the child is scheduled to be in each building and the amount of services the child is scheduled to receive under that child’s IEP. For example, if a child is to receive a certain type of therapy twice a week, and the child is determined to be located in a particular building and having a particular service provider for that therapy, over a four week period the child should theoretically receive eight units of the therapy by the identified service provider in that building.

An embodiment of the present invention allows the service provider to periodically (e.g., monthly) run a service gap analysis report based on the SETS or Encore system information and the encounter tracking feature information. The report can include both negative gaps, showing

shortfalls, and positive gaps, showing services greater than the expected number, along with combined totals over longer or combined periods (e.g., a short week or month may indicate a partial service is to be provided, which may occur during that time period or in the subsequent time period, producing either a positive over service or a negative gap, respectively, for that time period, which collectively balance out). In an embodiment of the present invention, information from each month or other selected time period is analyzed to determine any gap in the amount of services delivered during that month. These services are defined as the combined number of actual delivered services and services that were attempted to be delivered. In addition, surpluses and deficits from succeeding periods are added together to provide an overall deficit or surplus that a provider for a child has for a given period of time.

See, e.g., Appl'n, Paragraphs 0052, 0064, and 0065. In view of at least the foregoing, Applicants respectfully submit that the specification describes the claimed "calculations" in manner which would allow those of ordinary skill in the art to make and use the claimed invention. Therefore, Applicants respectfully request that the Examiner withdraw the enablement requirements of claims 1-18 and 32-35.

3. 35 U.S.C. § 103(a) Rejections

The Examiner rejected claims 1-39 under 35 U.S.C. § 103(a), as allegedly being rendered obvious by 4GL in view of Roper. In order for the Examiner to establish a prima facie case for obviousness, three (3) criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to those of ordinary skill in the art, to modify the primary reference as the Examiner proposes. Second, there must be a reasonable expectation of success in connection with the

Examiner's proposed combination of the references. And third, the prior art references must disclose or suggest all of the claim limitations. For at least the following reasons, Applicants respectfully submit that the Examiner fails to establish a Prima Facie case for obviousness.

Applicants' independent claim 1 describes a method for service gap analysis, the method comprising "electronically identifying **at least one encounter** associated with the service plan occurring within the date range by accessing a storage medium readable by the computer processor." Applicants' independent claims 14, 19, 20, and 31 include similar limitations. Thus, in Applicants' claimed invention as set forth in independent claims 1, 14, 19, 20, and 31, encounters that actually occur within the date range are electronically identified.

The Examiner asserts that 4GL describes electronically identifying at least one encounter associated with the service plan occurring within the date range. Applicants respectfully disagree with the Examiner's assertions.

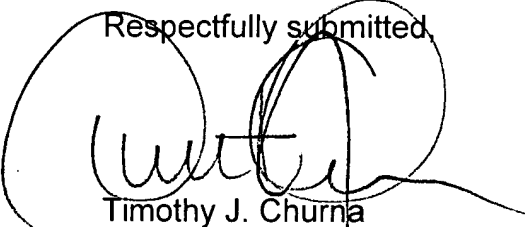
In contrast to Applicants' claimed invention, 4GL merely describes a system and method that allows schools to create timelines (schedules) for child related services (future encounters that are to be performed), and to create reports indicating whether the school satisfied compliance regulations **associated with the creation of such timelines (schedules)**. For example, 4GL states "principals in every school can pull up a set of 14 weekly reports that show, at a glance, exactly where their school stands regarding required activities and regulatory compliance." 4GL, Page 14, Lines 5-7. Similarly, 4GL states that

the system and method may be used to “produce management reports showing all upcoming timelines for a child or for a school, and all missed ones.” Id. at page 5, Lines 14 and 15. The reports described in 4GL are related to whether the school satisfied compliance regulations associated with **the creation of such timelines (schedules)**, and the phrase: “missed ones,” as used in 4GL, is associated with whether a school **missed a deadline for creating a timeline** for a particular child (**not** whether a scheduled encounter for the child was missed). However, in contrast to the claimed invention, the system and method described in 4GL **does not track or otherwise indicate whether or not any of the encounters/services included in the timeline (schedule) actually occurred**. Thus, 4GL fails to disclose or suggest electronically identifying at least one encounter associated with the service plan occurring within the date range. The Examiner does not allege that Roper or any other reference supplies these limitations that are missing from 4GL. Therefore, Applicants respectfully request that the Examiner withdraw the obviousness rejection of claims 1, 14, 19, 20, and 31 at least for these reasons.

Claims 2-13, 15-18, 21-30, and 32-39 depend from one of allowable, independent claims 1, 14, 20, and 31. Therefore, Applicants respectfully request that the Examiner withdraw the obviousness rejection of claims 2-13, 15-18, 21-30, and 32-39 at least for this reasons.

CONCLUSION

Applicants respectfully submit that the above-captioned patent application is in condition for allowance, and such action is earnestly solicited. If the Examiner believes that an in-person or telephonic interview with Applicants' representatives would expedite the prosecution of the above-captioned patent application, the Examiner is invited to contact the undersigned attorney of records. Applicants believe that no fees are due as a result of this submission. Nevertheless, in the event of any variance between the fees determined by Applicants and those determined by the U.S. Patent and Trademark Office, please charge any such variance to the undersigned's Deposit Account No. 01-2300.

Respectfully submitted,

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